

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA

S1 10 CR 60 (JG)

-against-

MOHAMMED ZAZI
-----X

AFFIRMATION

Deborah Colson, Esq., hereby affirms as follows:

1. I am an attorney licensed to practice in the State of New York, and together with Justine Harris, Esq., have been appointed pursuant to the Criminal Justice Act to represent Mohammed Zazi. I submit this affirmation in anticipation of the sentencing hearing, scheduled for February 10, 2012.

2. Ms. Harris and I filed a sentencing memorandum on January 23, 2012, and a supplemental letter to the Court on January 24, 2012. In both documents, we state that the government extended a plea offer to Mr. Zazi prior to trial that likely would have resulted in a non-incarceratory sentence. The government asserts that this is "incorrect." (Gov't ltr at 9 n. 2).

3. On January 28, 2010, Mr. Zazi was charged in this district in a one-count indictment alleging conspiracy to obstruct justice.

4. In May 2010, I had conversations with prosecutors regarding a disposition of the case in which they proposed that Mr. Zazi plead guilty to visa fraud in exchange for dismissal of the obstruction of justice indictment. The advisory Guidelines range for the crime of visa fraud in Criminal History Category I is 0 to 6 months.

5. In early June 2010, my partner Justine Harris and I traveled to Colorado to meet with Mr. Zazi. We spent many hours with Mr. Zazi over two days, during which we reviewed the discovery and discussed the plea offer.

6. On June 23, 2010, after returning from Colorado, Ms. Harris and I met with the assigned E.D.N.Y. prosecutors and an attorney from the Counterterrorism Section of the Department of Justice. During the meeting, which took place at the Brooklyn U.S. Attorney's Office, we thanked the prosecutors for their generous plea offer and asked them to keep it open as long as possible. We also suggested that they consider a deferred prosecution.

7. On July 12, 2010, while the plea offer was still open, Ms. Harris and I brought Mr. Zazi to a reverse proffer with the assigned E.D.N.Y prosecutors and the same attorney from the Department of Justice who had been present for the meeting in June 2010. AUSA David Bitkower described the government's evidence against Mr. Zazi as well as its case against Mr. Zazi's son, Najibullah. Mr. Bitkower assured Mr. Zazi that he understood that Mr. Zazi had not intended to help Al Qaeda but rather to assist his family.

8. On July 12 and July 13, 2010, Ms. Harris and I met independently with Mr. Zazi and again discussed the plea offer at length.

9. During May, June and July 2010, I had numerous phone conversations with Mr. Zazi's brother and with the attorney assigned to represent Najibullah Zazi, during which I enlisted their assistance in encouraging Mr. Zazi to accept the plea offer.

10. Based on conversations with Najibullah Zazi's lawyer, and our review of Najibullah's letters to his family, I believe that Najibullah also indirectly encouraged his father to accept the government's plea offer.

11. On September 20, 2010, I had a phone conversation with a prosecutor during which he stated in sum or substance that, if Mr. Zazi accepted a plea, there would be "no further need to look into his [Mr. Zazi's] family members."

12. Mr. Zazi ultimately rejected the offer.

13. On September 29, 2010, at a status conference before Judge Dearie, AUSA James Loonam reported that the parties had negotiated “in good faith” but had been unable to reach an agreement. Mr. Loonam further announced the government’s intention to file a superseding indictment against Mr. Zazi with additional charges. The superseding indictment was filed on November 29, 2010.

Dated: New York, N.Y.
February 8, 2012

/s/

Deborah Colson